

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**CLAYTON A. COHN and MARKETACTION
ADVISORS, LLC,**

Defendants.

No. 1:13-cv-05586

**MOTION FOR FINAL JUDGMENT AGAINST
DEFENDANT CLAYTON A. COHN AND TO VOLUNTARILY DISMISS
COMPLAINT AGAINST DEFENDANT MARKETACTION ADVISORS, LLC**

Plaintiff United States Securities and Exchange Commission (“SEC”) hereby moves: (a) to enter final judgment against defendant Clayton A. Cohn, imposing injunctive relief, ordering disgorgement, which is to be deemed satisfied by the imposition of restitution in the parallel criminal proceeding; and (b) to voluntarily dismiss all claims against defendant Marketaction Advisors, LLC (“Marketaction”). Defendants do not object to the relief sought herein. In support of its motion, the SEC states:

1. In August 2013, the SEC filed its complaint against Cohn, a former marine, and Marketaction, his entity. The SEC alleged that Cohn, through Marketaction, violated the federal securities laws when he raised nearly \$1.8 million from investors – mostly veterans and active duty military personnel – by lying to them

about his success as a trader, the performance of his hedge fund, his use of investor proceeds, and his personal stake in the hedge fund. Cohn ultimately lost all of the investors' proceeds. He concealed his losses from investors by lying about the fund's performance, by fabricating investor account statements, and by forging brokerage statements. Cohn also propped-up his failing venture by using new investor money to pay redemptions to earlier investors. Cohn's scheme began to unravel in early 2013 when several investors requested redemptions at the same time. This lawsuit followed. (See ECF No. 1.)

2. This case was effectively stayed pending completion of a parallel criminal investigation. On May 19, 2016, the U.S. Attorney's Office for the Northern District of Illinois charged Cohn with one count of wire fraud based on the same conduct described in the SEC's complaint. (See Ex. 1 hereto, Criminal Information filed in *United States v. Clayton Andrew Cohn*, 16-cr-325 (N.D. Ill.).)

3. On July 5, 2016, Cohn pled guilty in the criminal action. (See Ex. 2 hereto, Cohn's Plea Agreement.) In his plea agreement, Cohn admits all of the operative facts in the SEC complaint. (*Id.*, pp. 2-8.)

4. On January 24, 2017, Cohn was sentenced to 52 months in prison, to be followed by two years of supervised release, and ordered to pay \$1,556,488.11 in restitution to defrauded investors. (See Ex. 3 hereto, Judgment in Criminal Case.)

5. Subsequent to his sentencing, Cohn consented to the entry of a final judgment in the SEC's pending proceeding. (See Ex. 4 hereto, Cohn's Consent and Offer

of Settlement.) The signed settlement documentation – which includes Cohn’s consent to a final judgment in this matter, and Cohn’s offer of settlement in a follow-on administrative proceeding – contemplates a permanent injunction predicated on the securities law violations alleged in the SEC’s complaint. (*See, id.*, PDF p. 6 (referencing the Court’s entry of permanent injunction); PDF p. 10 (same).)

6. The SEC seeks to voluntarily dismiss all claims against Marketaction, since the entity is defunct, has no assets, and Cohn – its managing member and sole employee – is soon to be incarcerated.

7. Regarding Cohn, as reflected in the proposed order attached as Exhibit 5 to this motion, the SEC seeks the permanent injunctions contemplated in the settlement documentation (*see* Ex. 4). Given the egregious misconduct admitted in Cohn’s plea agreement (Ex. 2) and in the resulting criminal sentence (Ex. 3), and the attendant likelihood of future violations, permanent injunctive relief is warranted. *See, e.g., SEC v. Kinnucan*, 9 F. Supp. 3d 370, 375 (S.D.N.Y. 2014) (defendant’s criminal conviction in parallel proceeding weighed strongly in favor of a permanent injunction); *SEC v. Quinlan*, No. 02-60082, 2008 WL 4852904, at *12 (E.D. Mich. Nov. 7, 2008), *aff’d*, 373 F. App’x 581 (6th Cir. 2010) (imposition of permanent injunction warranted in light of, among other things, defendant being found guilty of conspiracy to commit fraud and to make false statements, and of making false and fraudulent statements in an annual report filed with the SEC).

8. In light of the restitution and incarceration ordered in Cohn’s criminal

proceeding, the SEC does not seek additional monetary relief from him in this matter. Rather, the SEC seeks to order disgorgement against Cohn in the amount of \$1,556,488.11, but deem it satisfied in light of the restitution ordered in the criminal proceeding in that amount. (*See* Ex. 5, Section VI.)

WHEREFORE, plaintiff United States Securities and Exchange Commission respectfully requests that the Court grant its motion, dismissing all claims against defendant Marketaction Advisors, LLC; entering final judgment against defendant Clayton A. Cohn in the manner set forth in the attached proposed order (Ex. 5 hereto), entering permanent injunctions against Cohn, and setting disgorgement in this matter but deeming it satisfied in light of the criminal restitution order; and granting such other and further relief as the Court deems just and proper.

Dated: March 23, 2017

Respectfully submitted,

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION**

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